MONTANA LEGISLATIVE HISTORY

Chapter 467 19 95

Bill H 444 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Feb 10	✓ C	Hearing Date(s)	Mar 20	✓ C
		C			C
		C			C
		C			C
Date Out	Feb 10	✓ C		Mar 20	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HB 444 INTRODUCED BY HARPER, ET AL.

PROVIDE REBUTTABLE PRESUMPTIONS IN CHILD CUSTODY PROCEEDINGS

2/06	INTRODUCED		
2/06	FIRST READING		
2/06	REFERRED TO JUDICIARY		
2/10	HEARING		
2/11	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/15	2ND READING PASSED AS AMENDED	96	3
2/17	3RD READING PASSED	94	3
	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO JUDICIARY		
3/20	HEARING		
3/21	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/25	2ND READING CONCURRED	48	0
3/27	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/03	2ND READING AMENDMENTS CONCURRED	95	5
4/04	3RD READING AMENDMENTS CONCURRED	93	5
4/06	SIGNED BY SPEAKER		
4/07	SIGNED BY PRESIDENT		
4/10	TRANSMITTED TO GOVERNOR		
4/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 467		
	EFFECTIVE DATE: 04/15/95		

HB 445 INTRODUCED BY GRADY, ET AL.

ESTABLISH A NOXIOUS WEED SEED FREE FORAGE PROGRAM AND ADVISORY COUNCIL

2/06	INTRODUCED		
2/06	FIRST READING		
2/06	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
2/07	FISCAL NOTE REQUESTED		
2/13	FISCAL NOTE RECEIVED		
2/13	FISCAL NOTE PRINTED		
2/14	HEARING		
2/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	86	11
2/20	3RD READING PASSED	89	8
	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
3/06	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/11	2ND READING CONCURRED	39	0
3/13	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/31	2ND READING AMENDMENTS CONCURRED	97	0
4/03	3RD READING AMENDMENTS CONCURRED	91	8
4/05	SIGNED BY SPEAKER		
4/06	SIGNED BY PRESIDENT		
4/07	TRANSMITTED TO GOVERNOR		
	RETURNED TO HOUSE WITH GOVERNOR'S PROPOSED AMENDMENTS		
4/12	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	95	4
4/13	3RD READING GOVERNOR'S AMENDMENTS		

House BILL NO. 444

INTRODUCED BY Hayne Wyatt Hurdle Kottel Stahl James Caldwell

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING REBUTTABLE PRESUMPTIONS IN CHILD CUSTODY PROCEEDINGS; ALLOWING A PARENT TO OBJECT AND HAVE A HEARING IN VISITATION PROCEEDINGS AND CUSTODY MODIFICATION PROCEEDINGS IF A PERSON RESIDING IN THE OTHER PARENT'S HOUSEHOLD HAS BEEN CONVICTED OF A CERTAIN LISTED CRIME; AND AMENDING SECTIONS 40-4-212, 40-4-217, AND 40-4-219, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-4-212, MCA, is amended to read:

"**40-4-212. Best interest of child.** (1) The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors, including but not limited to:

(a) the wishes of the child's parent or parents as to ~~his~~ custody;

(b) the wishes of the child as to ~~his~~ a custodian;

(c) the interaction and interrelationship of the child with ~~his~~ the child's parent or parents~~, his~~ and siblings~~,~~ and with any other person who may significantly affect the child's best interest;

(d) the child's adjustment to ~~his~~ home, school, and community;

(e) the mental and physical health of all individuals involved;

(f) physical abuse or threat of physical abuse by one parent against the other parent or the child; and

(g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent.

(2) A de facto custody arrangement, in the absence of a prior custody decree, does not require the child's parent or parents to prove the factors set forth in 40-4-219.

(3) The following are rebuttable presumptions and apply unless contrary to the best interest of the child:

(a) Custody should be granted to the parent who has provided most of the primary care during the child's life.

(b) A custody action brought by a parent within 6 months after a child support action against that

parent is vexatious.

(4) The following are rebuttable presumptions:

(a) A knowing failure to pay birth-related costs that the person is able to pay is not in the best interest of the child.

(b) Failure to pay child support that the person is able to pay is not in the best interest of a child in need of the child support."

Section 2. Section 40-4-217, MCA, is amended to read:

"**40-4-217. Visitation.** (1) A parent who is not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition of a grandparent, grant reasonable visitation rights to the grandparent of the child if the court finds, after a hearing, that the visitation would be in the best interest of the child.

(3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the court may not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health or unless the provisions of subsection (6) apply.

(4) ~~So~~ As long as a noncustodial parent who has visitation rights under a decree or a custody agreement remains a resident of this state, a resident custodial parent shall, before changing the child's residence to another state and unless the noncustodial parent has given written consent, give written notice to the noncustodial parent, as provided in subsection (5).

(5) The written notice required by subsection (4) must be served personally or given by certified mail not less than 30 days before the proposed change in residence. Proof of service must be filed with the court that issued the custody order. The purpose of the notice is to allow the noncustodial parent to seek a modification of ~~his~~ the visitation schedule.

(6) (a) If a noncustodial parent or other person residing in the noncustodial parent's household has been convicted of any of the crimes listed in subsection (6)(c), the custodial parent or any other person who has been granted custody of the child pursuant to court order may file an objection to visitation with the court. The custodial parent or other person having custody shall give notice to the noncustodial parent

of the objection as provided by the Montana Rules of Civil Procedure, and the noncustodial parent shall have 20 days from the notice to respond. If the noncustodial parent fails to respond within 20 days, the visitation rights of the noncustodial parent are suspended until further order of the court. If the noncustodial parent responds and objects, a hearing must be held within 30 days of the response.

(b) The noncustodial parent has the burden at the hearing to prove that visitation by the noncustodial parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of visitation is not in the best interest of the child.

(c) This subsection (6) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) incest, as described in 45-5-507;

(vi) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

(vii) endangering the welfare of children, as described in 45-5-622;

(viii) domestic abuse of the type described in 45-5-206(1)(a);

(ix) sexual abuse of children, as described in 45-5-625."

Section 3. Section 40-4-219, MCA, is amended to read:

"**40-4-219. Modification.** (1) The court may in its discretion modify a prior custody decree if it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or ~~his~~ the child's custodian and that the modification is necessary to serve the best interest of the child and if it further finds that:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian;

(c) the child's present environment endangers seriously ~~his~~ the child's physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to ~~him~~ the child;

(d) the child is 14 years of age or older and desires the modification;

(e) the custodian willfully and consistently:

(i) refuses to allow the child to have any contact with the noncustodial parent; or

(ii) attempts to frustrate or deny the noncustodial parent's exercise of visitation rights; or

(f) the custodial parent has changed or intends to change the child's residence to another state.

(2) A court may modify a de facto custody arrangement in accordance with the factors set forth in 40-4-212.

(3) The court shall presume the custodian is not acting in the child's best interest if the custodian does any of the acts specified in subsection (1)(e) or (8).

(4) The court may modify the prior decree based on subsection (1)(f) to provide a new visitation schedule and to apportion transportation costs between the parents.

(5) Attorney fees and costs ~~shall~~ must be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

(6) A custody decree may be modified upon the death of the custodial parent pursuant to 40-4-221.

(7) As used in this section, "prior custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding.

(8) (a) If a parent or other person residing in that parent's household has been convicted of any of the crimes listed in subsection (8)(c), the other parent or any other person who has been granted custody of the child pursuant to court order may file an objection to the current custody order with the court. The parent or other person having custody shall give notice to the ~~convicted~~ other parent of the objection as provided by the Montana Rules of Civil Procedure, and the ~~convicted~~ other parent shall have 20 days from the notice to respond. If the ~~convicted~~ other parent fails to respond within 20 days, the custody rights of the ~~convicted~~ other parent are suspended until further order of the court. If the ~~convicted~~ other parent responds and objects, a hearing must be held within 30 days of the response.

(b) The ~~convicted~~ other parent has the burden at the hearing to prove that custody by the ~~convicted~~ other parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of custody is not in the best interest of the child.

(c) This subsection (8) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) incest, as described in 45-5-507;

(vi) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

(vii) endangering the welfare of children, as described in 45-5-622;

(viii) domestic abuse of the type described in 45-5-206(1)(a);

(ix) sexual abuse of children, as described in 45-5-625."

-END-

HOUSE JUDICIARY

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE			REREFERRED	DATE READ
HB0357	BOHARSKI, WILLIAM		CREATE SENTENCING STUDY COMMISSION TO STUDY SENTENCING AND GUIDELINES					
	1/27	2/13		DO PASS	2/15	VOTE: 18-0		2/15
HB0366	KASTEN, BETTY LOU		GENERALLY REVISE ADULT PROTECTIVE SERVICES LAW; DISCLOSURE AND IMMUNITY					
	2/01	2/09	TABLED 2/15 19-0 RECONSIDER 2/17	PASS AS AMENDED	2/17	VOTE: 16-2		2/17
HB0371	SMITH, LIZ		INCREASE PENALTY AND REQUIRE RESTITUTION FOR HARMING A POLICE DOG					
	1/30	2/09		PASS AS AMENDED	2/9	VOTE: 17-0		2/11
HB0378	JORE, RICK		INCREASE PERSISTENT FELONY OFFENDER PENALTY FOR VIOLENT CRIMES					
	1/30	2/10		DO PASS	2/11	VOTE: 17-2	APPROPRIATIONS	2/14
HB0380	MCKEE, JEANETTE		EXTENDED JURISDICTION PROSECUTION ACT FOR JUVENILES; REVISE SENTENCING					
	1/30	2/14		PASS AS AMENDED	2/16	VOTE: 17-2		2/17
HB0382	PAVLOVICH, BOB		LIMIT CITY LIABILITY FOR SIDEWALK INSTALLATION AND MAINTENANCE					
	1/30	2/10		TABLED ON	02/11	VOTE: 17-2		
HB0388	REAM, BOB		INCLUDE SEXUAL ORIENTATION IN SOME OF THE HUMAN RIGHTS LAWS PROTECTIONS					
	1/31	2/10		TABLED ON	02/11	VOTE: 13-6		
HB0402	NELSON, THOMAS		LET DEPUTY APPEAL DISMISS TO COURT & POLICE COMMISSION TRY DISCIPLINE CASES					
	2/01	2/08	POSTPONE ACTION 2/8	TABLED ON	02/09	VOTE: 14-5		
HB0429	MOLNAR, BRAD		REVISE YOUTH COURT CONFIDENTIALITY PROVISIONS					
	2/04	2/09		PASS AS AMENDED	2/16	VOTE: 12-6		2/17
HB0443	MERCER, JOHN		REVISE UNFAIR CLAIMS SETTLEMENT PRACTICES					
	2/06	2/13		PASS AS AMENDED	2/16	VOTE: 15-3		2/17
HB0444	HARPER, HAL		FURTHER PROTECT CHILDREN IN CHILD CUSTODY PROCEEDINGS					
	2/06	2/10		PASS AS AMENDED	2/10	VOTE: 14-4		2/11
HB0450	MARTINEZ, BONNIE		MANDATE TRIAL AS ADULT OF THOSE 12 AND OVER WHO COMMIT CERTAIN CRIMES					
	2/06	2/14		TABLED ON	02/16	VOTE: 17-1		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on February 10, 1995, at 7:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: None

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	HB 382, HB 378, HB 388, HB 444
Executive Action:	HB 309 DO PASS AS AMENDED
	HB 323 DO PASS AS AMENDED
	HB 444 DO PASS AS AMENDED

HEARING ON HB 444

Opening Statement by Sponsor:

REP. HAL HARPER, HD 52, proposed HB 444 as a means of dealing with child custody proceedings and child [custody] modification proceedings. It added two rebuttable presumptions that apply as contrary to the best interests of the child which are:

1. Custody should be granted to the parent who has provided most of the primary care during the life of the child, and

2. A custody action brought by a parent within six months after the child support action against that parent is vexatious.

Two rebuttable presumptions are added that:

1. Knowing failure to pay birth-related costs, if that person is able to pay, is not in the best interests of the child, and

2. Failure to pay child support, if that person is able to pay, is not in the best interests of the child.

He said the second part of the bill dealt with visitation rights and modification of a custody decree by basically broadening two definitions. He directed the committee to where these could be found in the bill and how they broadened the definitions to apply to any person residing in the household other than the non-custodial parent.

Proponents' Testimony:

Robert Mahr spoke in support of the bill and described how he was involved in a situation where his former wife had moved their daughter into her household with a sex offender. He said he had been unable to gain help from the agencies he had approached and described the frustrations in changed court dates and loss of contact with his daughter. This bill would allow his case to be heard and potentially remove his daughter from the potential danger.

Renae Mahr described the above situation in more detail. She believed that the amended bill would ensure that they would be heard in a reasonable time frame and would facilitate the resolution of the contested custody issues.

Vivian Marie, Attorney, Montana Legal Services, presented written testimony. She said she has difficulty explaining to clients that they cannot connect the issues of visitation and non-payment of support. She said the judge should be able to consider that issue in determining how much the parent has the child's interests at heart in custody hearings. **EXHIBIT 28**

Neil Haight, Legal Services, gave his perspective as former Fergus County Attorney. He felt it addressed the safety of a child both from physical abuse and from the tug-o'-war that happens in many dissolution cases. He felt it also dealt with continuity of the children's care and well being.

Sharon Bakerson, MACeM, said HB 444 would definitely be in the best interests of the innocent children. She said there are children living in custodial homes where step-parents have been convicted of crimes and sexual abuse of children and the non-custodial parents had been trying to gain hearings in some cases for over a year and more. She also described pending cases where children are being sexually abused and are physically and mentally abused by a parent, but the hearings have been repeatedly postponed. Children have a right to speedy hearings just as adults have a right to speedy trial, she felt.

David Hull, Helena City Attorney, reported that in his private practice he does a certain amount of domestic relations work representing parents in custody cases. He supported the bill in general, but in particular supported those provisions in 40-4-217 (6) and (8), MCA.

Mary Alice Cook, Advocates for Montana's Children, strongly voiced support for HB 444.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. SOFT asked how this bill will speed up the process.

REP. HARPER explained how the current law deals with filing for custodial hearings and the time frames involved. He then applied the language of the bill to demonstrate the change.

REP. SMITH asked how the parent would be defined in the statute.

REP. HARPER was sure the relationship was defined either through visitation proceeding or custody proceedings. These sections deal with the modification of a custody decree or visitation.

REP. SMITH asked for clarity regarding the other person residing in the home as stipulated in the bill.

REP. HARPER said this person is termed a noncustodial parent, but has visitation rights. It addressed a situation where the non-custodial parent has not been convicted of a crime, but that person's boyfriend, girlfriend or other person may be posing a danger to the child.

{Tape: 2; Side: A}

REP. MC GEE was concerned with the definition of primary care and wondered if the one who feeds the child would be considered as having primary care.

Mr. Hull said his concept of primary care was a more expansive concept than covering the one who is there on a regular basis to provide care.

REP. MC GEE asked if primary care could include the mother feeding the child.

Mr. Hull said that was correct.

REP. MC GEE asked if the father who works to buy the food and provide the other things could be considered the primary care giver.

Mr. Hull said that was not usually the case. In reality the courts usually recognize the mother as the primary care giver.

REP. MC GEE asked if the bill was worded currently in such a way that custody would be given to the mother in any case.

Mr. Hull responded, "Not necessarily because if the primary care hasn't been adequate and the best interests of the child are not being served, then the court has an obligation to look into that and change custody....."

REP. MC GEE asked if this bill were to pass, would it add the argument for the best interests of the child, which is not currently in statute.

Mr. Hull answered that that was not correct, because best interests of the child is already in the criteria. It just establishes some presumptions that the parties need to address in a noncustodial parent's case if the other parent had been determined to be the primary care giver, they have to overcome that burden. In reality that burden has to be overcome anyway. The one who is dealing with the child on a day-to-day basis is the one the experts think should be the primary parent.

REP. CHRIS AHNER asked if the parent had to be present at the court for a contested custody hearing.

Mr. Hull said she would if she were going to present testimony. He said that if this bill had been in place when the case which was presented in testimony occurred, the hearing would have taken place before the parent left the state with the child. The delay allowed the parent to leave the state.

REP. AHNER asked what kind of cooperation there was between states.

Mr. Hull described what those were.

Closing by Sponsor:

REP. HARPER closed.

CHAIRMAN CLARK set a 30-minute time limit for witnesses on each side for the hearing on HB 388. He then relinquished the chair to **VICE CHAIR WYATT.**

HEARING ON HB 388

Opening Statement by Sponsors:

REP. BOB REAM, HD 69, presented HB 388 to the committee. His opening remarks are in written form. **EXHIBIT 29**

REP. JOHN BOHLINGER, HD 14, spoke in support of HB 388 for the same reasons he supports the constitutionally guaranteed rights which protect all citizens' freedoms from discrimination because of race, creed, religion, color, sex, physical or mental disability, age or national origin. He said that HB 388 added sexual orientation. He said he had never met a homosexual who had made a conscious choice about his or her sexual preference. He reported that scientific evidence had been introduced that would suggest that it is a genetic disposition and not a matter of choice. He urged the committee to vote in support of HB 388.

Proponents' Testimony:

David Orendorff, United Methodist Pastor, read his testimony in favor of HB 388. **EXHIBIT 30**

{Tape: 2; Side: A; Approx. Counter: 23.0}

Sandra Hale, Executive Director, PRIDE, supported HB 388. **EXHIBIT 31**

REP. JOAN HURDLE, HD 13, rose in support of HB 388. **EXHIBIT 32**

Darrell Holzer, AFL-CIO, encouraged the support of HB 388. He quoted from the long-standing policy of the more than 16 million members of the national AFL-CIO regarding the issues of discrimination based upon sexual orientation. Basically it said that workers were to be judged on their work and not on irrelevant criteria that addresses their private lives.

Kate Mc_____, resident of Bozeman (her name was illegible on the sign-in sheet), testified to the discrimination of people in employment on the basis of their sexual preference. She was not a victim of that discrimination, but was a witness to it.

Erik Henderson, presented his testimony in support of HB 388. **EXHIBIT 33**

Ms. MacIntyre did not think so, but would want to be able to look at the word as it related to the existing statutory provisions because of certain work sharing relationships with the U. S. Department of Housing and Urban Development and the Equal Employment Opportunity Commission.

Closing by Sponsor:

REP. REAM closed by reading a portion of the Gettysburg Address which highlighted equal creation and the words of our founding fathers. He addressed some of the opponents' testimony and felt they were missing the point. He said he was not condoning any particular life style or behavior. He said it was not an unconstitutional bill. The comments that homosexual incomes are roughly $10,000 higher than for heterosexuals were irrelevant in his opinion. He heard contradictions in the testimony that loss of income and productivity occurs because of homosexuality. He pointed out that the largest and fastest growing group of individuals with AIDS are heterosexual females, not homosexuals. Then he addressed the fears raised by the Catholic Conference. He said that the statement that homosexuality is a choice is absolutely wrong. He then stated his own religious beliefs and history. He believed that homosexuality was condoned by Christians in the time of Paul at Corinth and the opposition to it came after that time. He felt it was a longstanding orientation that legislation and other methods would not eradicate. His final comment was that there is a difference between pedophiles and homosexuals in that pedophiles victimize children where homosexual behavior is consensual in nature in relationships between individuals.

CHAIRMAN CLARK commended the witnesses for their respectful behavior and again thanked the opponents for relinquishing their time to the proponents.

EXECUTIVE ACTION ON HB 444

Motion: **REP. WYATT MOVED HB 444 DO PASS.**

Discussion: **REP. MC GEE** argued against the bill because of the definition of primary care giver.

Motion: **REP. MC GEE MOVED TO AMEND HB 444 BY STRIKING ON PAGE 1 SUBSECTION (3)(A) AND (B) WHICH EXTENDED TO PAGE 2.**

Discussion: **REP. MOLNAR** did not understand the rebuttable presumption concept and asked for an explanation line for line.

REP. MC GEE said it meant, "you are guilty until found innocent." He said it is the presumption of law that if you meet these particular criteria you are in fact guilty and must prove yourself innocent.

REP. MOLNAR continued with his clarification.

REP. ANDERSON said that rebuttable presumption did not include the terms, "guilty and proven innocent," because there are differing standards of proof in overcoming a rebuttable presumption which

he believed was a preponderance of the evidence which is 51% of the evidence rather than beyond reasonable doubt.

REP. MOLNAR asked if it was then saying that if the mother was the primary care giver, and the father wanted to raise an argument, that that is not a good enough reason solely to grant custody. This would not give him the right to raise that objection.

REP. KOTTEL supported **REP. MC GEE'S** amendments. Rebuttable presumption says that if both parents are absolutely equal in ability to take custody of the child, the one that is the primary care giver will get the child rather than the other. If they first say that the mother or the father is the primary care giver, then the burden shifts to the other party to show that it would be in the best interests of the child to go to them. The shift of burden is just preponderance of evidence by 51%. She thought lines 28 and 29 penalized males or other wage earners who are good parents and gave an unfair advantage to someone simply because they were the parent at home.

REP. MOLNAR asked how that differed from the current practice or was this just legitimizing it for the judges.

REP. KOTTEL said that was what she thought they were doing.

REP. BILL CAREY asked why they couldn't keep (b) under subsection (3).

REP. MC GEE said he had a problem with the fact that it put an onerous tone in the bill and believed it was unnecessary. He returned to testimony on the rebuttable presumption to support his amendment.

REP. ANDERSON agreed that both (a) and (b) should come out of the bill.

REP. GRIMES supported the amendment.

REP. MC GEE shared a story which substantiated the amendment.

Vote: **The motion carried, 18 - 1, REP. MC CULLOCH voted no.**

Motion: **REP. BOHARSKI MOVED HB 444 DO PASS AS AMENDED.**

Discussion: **REP. MOLNAR** reviewed the rebuttable presumption concepts on page 2, lines 2 through 6 and asked why they were included in the bill.

Motion: **REP. KOTTEL MOVED TO AMEND BY INSERTING AFTER LINE 23, SUBSECTION (H) TO READ IDENTICALLY TO LINES 3 AND 4 ON PAGE 2. CREATE SUBSECTION (I) IDENTICAL ON PAGE 2, LINES 5 AND 6.**

Discussion: **REP. MOLNAR** said if all that was left in the bill is telling the court that it cannot consider what they have always considered, he did not know why they would tie up the time on the House floor and in the Senate doing that.

REP. KOTTEL said that also left in the bill were custodial issues and visitation issues.

REP. MOLNAR asked what advantage to society there is to putting it in legislation when the judge already has discretion.

REP. KOTTEL said she did now know that the court does consider the two issues in determining the best interests of the child. Her belief was that if the court would consider them, they would be violating statute. The statute is clear that they can only consider issues (a) through (g) in determining the best interests of the child. So this bill would make a substantive change.

REP. MOLNAR thought they should also include that it was in the best interests of the child for the custodial parent not to unreasonably deny access to the other parent.

REP. KOTTEL agreed but said that this bill did not determine how parents should raise their children, but it would only determine who should get custody of the child and then determine visitation rights.

REP. SMITH felt that the amendment would be enough to request that they weigh ability to pay child support or financial obligations before that was taken into consideration.

John MacMaster commented that the committee should be aware that they were talking about custody between the two parents and they were looking at certain things between the parents. He suggested wording the amendment to reflect that properly.

REP. GRIMES had questions about the wording changing the intention of the bill and **REP. KOTTEL** said her amendment was conceptual and that **Mr. MacMaster** would adjust it.

REP. GRIMES planned to vote for it but did not have enough information even yet.

REP. ANDERSON did not like the amendment and asked how they would know when they were determining custody if a parent is able for

paying child support. He did not see how knowing whether the birth costs were paid for was going to help the court decide which parent was the best parent to have the child.

REP. GRIMES asked if that allowed for one more factor to be contested by either party.

Motion: **REP. BOHARSKI MOVED A SUBSTITUTE AMENDMENT TO DELETE SECTION 1 IN ITS ENTIRETY (THE NEW LANGUAGE).**

Discussion: **REP. KOTTEL** said custody determination does not take place only at the time of dissolution. She said that section would be important if there was a later change of custody action. She felt the failure to pay birth costs by either parent, if able to pay, is a clear "walking-the-talk" issue thus another objective fact the judge could consider.

REP. MC GEE asked if the amendment addressed striking section 4 at the top of page 2 and found that to be correct.

Vote: **The motion (on the Boharski amendment) failed on a tie vote, 9 - 9, by roll call.**

Vote: **The motion (on the Kottel amendment) carried 16 - 2, REPS. ANDERSON and SOFT voted no.**

{Tape: 3; Side: A; Approx. Counter: 52.1; Comments: Proxy votes for REP. SHEA were recorded, but not submitted to the secretary following the meeting.}

Motion: **REP. KOTTEL MOVED HB 444 DO PASS AS AMENDED.**

Motion: **REP. MOLNAR MOVED TO AMEND BY INSERTING ON PAGES 3 AND 5 "DEVIANT SEXUAL CONDUCT, AS DESCRIBED IN 45-5-505, MCA."**

Discussion: **REP. MOLNAR** explained his reasoning for the amendment that though gays and lesbians are covered under that statute, so are bestiality and other things. He said the bill was worded to require proof that there would be no endangerment to a child. He doubted that a judge would say that having a lover of the same gender is an endangerment to a child. However, there were other things in that same statute which could be an endangerment to a child. He felt it should be left to the discretion of the court to apply it as they would other statutes.

REP. KOTTEL suggested that since his statement indicated that he was not attempting to exclude parentage or custody by homosexual biological parents, the language under 45-2-101 (20), MCA, which defines deviant sexual relations be included in the wording of the amendment and to exclude the broad definition of deviant sexual behavior while including specifics like bestiality.

REP. MOLNAR suggested that be made as a substitute motion, but was uncomfortable with it because it dealt with the time period while a person was being charged with the felony and perhaps on

trial, but not actually convicted of the felony. They should allow the courts to get into the issue of seriously endangered....just the same as they do in all of the other felony crimes.

REP. KOTTEL said that last argument made sense to her because none of those behaviors would be excluded until the person had been convicted of deviant sexual behavior. She wanted to change the wording and the sponsor of the amendment had said why he did not want to change his amendment.

REP. ANDERSON asked if they could take this action within the title of the bill.

Mr. MacMaster answered that they could and why.

Vote: **The motion carried 10 - 8 by roll call vote.**

Motion/Vote: **REP. BOHARSKI MOVED HB 444 DO PASS AS AMENDED. The motion carried 14 - 4 by roll call vote.**

Motion: **REP. BOHARSKI MOVED TO ADJOURN.**

{Comments: This set of minutes is complete on three 60-minute tapes.}

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 2/10/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

HOUSE STANDING COMMITTEE REPORT

February 10, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 444** (first reading copy -- white) **do pass as amended.**

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, line 4.
Strike: "REBUTTABLE PRESUMPTIONS"
Insert: "AN ADDITIONAL FACTOR THAT A COURT MUST CONSIDER"

2. Page 1, line 21.
Following: line 20
Insert: "(f) a knowing failure of a parent to pay birth-related costs or child support that the parent is able to pay;"

Renumber: subsequent subsections

3. Page 1, line 26, through line 6 of page 2.
Strike: subsections (3) and (4) in their entirety

4. Page 3, line 13.
Following: line 12
Insert: "(v) deviate sexual conduct, as described in 45-5-505;"

Renumber: subsequent subsection

5. Page 5, line 3.
Following: line 2
Insert: "(v) deviate sexual conduct, as described in 45-5-505;"

Renumber: subsequent subsection

2/10

Committee Vote:
Yes 14, No 4.

351524SC.Hbk

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 2/16/95 BILL NO. HB444 NUMBER Boharski Amendment

MOTION: Strike Section 1

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority	✓	
Rep. Diana Wyatt, Vice Chairman, Minority		✓
Rep. Chris Ahner		✓
Rep. Ellen Bergman		~~✓~~
Rep. Bill Boharski	✓	
Rep. Bill Carey		✓
Rep. Aubyn Curtiss		✓
Rep. Duane Grimes	✓	
Rep. Joan Hurdle		✓
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee	✓	
Rep. Brad Molnar	✓	
Rep. Debbie Shea		✓
Rep. Liz Smith	✓	
Rep. Loren Soft		✓
Rep. Bill Tash	✓	
Rep. Cliff Trexler	✓	

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 2/10/95 BILL NO. HB444 NUMBER _____

MOTION: Do Pass As Amended

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority	✓	
Rep. Diana Wyatt, Vice Chairman, Minority	✓	
Rep. Chris Ahner	✓	
Rep. Ellen Bergman		
Rep. Bill Boharski	✓	
Rep. Bill Carey		✓
Rep. Aubyn Curtiss	✓	
Rep. Duane Grimes	✓	
Rep. Joan Hurdle		✓
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee	✓	
Rep. Brad Molnar	✓	
Rep. Debbie Shea	✓	
Rep. Liz Smith	✓	
Rep. Loren Soft	✓	
Rep. Bill Tash	✓	
Rep. Cliff Trexler	✓	

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 2/16/95 BILL NO. HB444 NUMBER Molnar Amendment

MOTION: _____

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority		✓
Rep. Diana Wyatt, Vice Chairman, Minority		✓
Rep. Chris Ahner	✓	
Rep. Ellen Bergman		
Rep. Bill Boharski	✓	
Rep. Bill Carey		✓
Rep. Aubyn Curtiss	✓	
Rep. Duane Grimes	✓	
Rep. Joan Hurdle		✓
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee	✓	
Rep. Brad Molnar	✓	
Rep. Debbie Shea		✓
Rep. Liz Smith	✓	
Rep. Loren Soft	✓	
Rep. Bill Tash	✓	
Rep. Cliff Trexler		✓

EXHIBIT 28-A
DATE 2/10/95
HB 444

TESTIMONY OF VIVIAN MARIE

IN FAVOR OF HOUSE BILL 444

This bill has three main components. First, it changes some language to be gender neutral. Second, it allows for modification of visitation or custody if ANYONE IN THE HOUSEHOLD has been convicted of certain listed crimes which affect children. Currently, the law applies only to the actual parents of the child at issue; this amendment expands the provision to the rest of the parent's household. Third, the bill adds to the things a court should consider when determining the "best interests of the child." It is this third area which I will address, although I certainly support the other two changes.

The impetus for these changes was the problems our clients faced when the Child Support Enforcement Division (CSED) pushed a non-custodial parent for child support. All too often, pressure to support a child results in an action to change custody so as to avoid payment of support. Since CSED does not provide legal help in defending against these actions, the custodial parent (AND the child!) may face heavy legal costs, not to mention emotional costs. There are four elements added to the "best interests" statute which we believe we alleviate some of these problems. I believe you will find that each one comports with your common sense of what children need.

First, the bill includes a presumption in favor of the primary caregiver. The term "primary caregiver" refers to that individual who prepares meals, gets the child off to school or daycare, goes to school events, arranges for routine medical care, shops for clothing, bathes and puts the child to bed at night. In other words, the day-to-day parenting tasks, which require a great deal of time and attention to detail. The Uniform Marriage and Divorce Act, adopted by Montana in the mid-1970s, stresses the importance of stability in a child's life. Our current statute dealing with best interests instructs a judge to consider the child's relationship with each parent, along with many other factors. The statute does NOT, however, give any particular weight to any of these factors. Maintaining a child's accustomed primary caregiver needs to be given substantial weight in making custody and visitation decisions. In addition, we hope this section will help prevent child-snatching because the mere fact that a child is currently in the snatcher's care will not help the party prevail before the judge. At least one other state, Virginia, has enacted a statute in favor of the primary caregiver. Several other states have similar provisions in their caselaw.

Second, the bill presents a presumption that a move to change custody, brought within six (6) months of an action to enforce support, is vexatious. Such a presumption is not unique; for example, our landlord/tenant law includes a presumption that a move

to evict a tenant, brought within six months of the time a tenant makes a complaint, is motivated by retaliation. The section is designed to make a non-custodial parent consider carefully whether to begin such a legal action. The intention is to prevent taking up the court's time with baseless challenges to custody which are not motivated by concern for the child, but an attempt to avoid paying support or to pressure the custodial parent into settling for a lower amount of support.

Finally, I will address the third and fourth proposed changes together, since they both address payment for a child's needs--one relating to birth costs and the other to ongoing support. One of the things I have trouble explaining to my clients is the part of our family law which says that payment of support and the exercise of visitation rights cannot be connected. In other words, support must be paid whether the custodial parent is allowing visitation or not. Similarly, visitation must be allowed whether support is paid or not. There is logic to that policy, and I agree with it. It should remain as it stands. However, common sense tells us that a parent who really cares will do his or her best to see that the child has what it needs financially. So when a judge faces a parent who asks for a change in custody, a parent who has been really delinquent in paying for a child's needs, the judge should be able to consider that delinquency. Right now, this is not a factor a judge is asked to consider. You will notice that it is carefully drafted to allow for parents who may not even be aware of the child's existence, or aware of a need. It allows for parents who are not able to contribute financially. It comes down hard, though, on those who simply refuse to pay.

In concert, these changes encourage custodial parents to cooperate with CSED, they encourage non-custodial parents to pay what they can in support, and they encourage all parents to be seriously involved with their children on a day-to-day basis. They bolster a child's stability and security, prevent vexatious causes which clog the courts, and make for better custody decisions when a case does reach the courts. I hope that you will support these changes, and invite any questions.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 2.10.95

BILL NO. HB 444 SPONSOR(S) Speaker Mercer

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NAME AND ADDRESS	REPRESENTING	Support	Oppos
Renae Mahr 3716 Wylie Helena	MACEM	X	
Robert Mahr 3716 wylie	MACeM	X	
Sharon Bakerson	MaCeM	X	
David Hull Helena	sole	X	
Vivian Marie	MLSA	X	
Laura Kaduk	Christian Coalition of Mt	X	
[illegible]	Self		
Mary Alice Cook	adv for MTs Children	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT F
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

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CS-14

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0355	REHBEIN, WILLIAM 2/21	3/10		CLARIFY THEFT DEFINITION FOR STATUTE OF LIMITATIONS PURPOSES 3/10 CONCUR VOTE:		3/11
HB0356	BOHARSKI, WILLIAM 2/21	3/14		TRUTH IN SENTENCING; PAROLE AND GOOD TIME REVISIONS 3/14 CONCUR VOTE:		3/15
HB0357	BOHARSKI, WILLIAM 2/21	3/14		CREATE SENTENCING STUDY COMMISSION TO STUDY SENTENCING AND GUIDELINES 3/14 CONCUR VOTE:		3/15
HB0366	KASTEN, BETTY LOU 3/03	3/15	3/15	GENERALLY REVISE ADULT PROTECTIVE SERVICES LAW; DISCLOSURE AND IMMUNITY 3/22 CONCUR AS AMENDED VOTE:		3/23
HB0380	MCKEE, JEANETTE 2/27	3/13		EXTENDED JURISDICTION PROSECUTION ACT FOR JUVENILES; REVISE SENTENCING 3/13 CONCUR AS AMENDED VOTE:		3/14
HB0410	PAVLOVICH, BOB 2/27			REQUIRE STATE EMPLOYEES DISCLOSE POTENTIAL CONFLICTS OF INTEREST VOTE:		
HB0429	MOLNAR, BRAD 2/27	3/13	3/13	REVISE YOUTH COURT CONFIDENTIALITY PROVISIONS 3/14 CONCUR AS AMENDED VOTE:		3/16
HB0443	MERCER, JOHN 2/27	3/16	3/24	REVISE UNFAIR CLAIMS SETTLEMENT PRACTICES TABLED ON 03/22 VOTE:		
HB0444	HARPER, HAL 2/21	3/20		FURTHER PROTECT CHILDREN IN CHILD CUSTODY PROCEEDINGS 3/20 CONCUR AS AMENDED VOTE:		3/21
HB0457	VICK, STEVE 2/21	3/07		PROHIBIT THE POSSESSION AND CONSUMPTION OF TOBACCO PRODUCTS BY MINORS 3/07 CONCUR AS AMENDED VOTE:		3/09
HB0474	COBB, JOHN 2/21	3/07		PROVIDE FOR TRAINING FOR JUVENILE PROBATION OFFICERS 3/07 CONCUR VOTE:		3/08
HB0482	GRIMES, DUANE 2/27	3/16		PARENTAL NOTIFICATION OF ABORTION 3/22 CONCUR AS AMENDED VOTE:		3/23

42

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **ACTING CHAIRMAN AL BISHOP**, on March 20, 1995, at 8:00 A.M.

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	HB 444, HB 491, HB 340, HJR 27
Executive Action:	HB 444, HB 340, HB 323, HB 547, HB 332, HB 160, HB 160 (Minority Report) HB 491 - discussion

{Tape: 1; Side: A; Approx. Counter: 00}

HEARING ON HB 491

Opening Statement by Sponsor:

REPRESENTATIVE MATT BRAINARD, House District 42, Missoula, sponsored HB 491, which he said was a short and simple bill. He said it was presented in the House Judiciary Committee without either proponents or opponents. The bill would clarify that the sheriff is the chief law enforcement officer of the county. Under some federal laws proposed, they refer to the, "chief law enforcement officer." This is complicated by the fact that there

American people, as well as the people of Montana. He said he was proud to send this resolution to Congress.

HEARING ON HB 444

Opening Statement by Sponsor:

REPRESENTATIVE HAL HARPER, House District 52, Helena, sponsored HB 444 said it, like HB 340, was a loophole closer. It had been brought because of a real life situation and the court has said the law must be changed. The purpose of the bill is to protect children, and protect the rights of parents, he said. The bill draft request came from a man whose ex-wife was granted custody of their daughter. The ex-wife then married a man who had been convicted of a crime of sexual abuse of children. The victim was a young girl of the same approximate age of the daughter. Under current law, Line 30, if the custodial parent had committed any of the crimes in Subsection (6) (c), the man could have petitioned the court and had both visitation and custody modification proceedings started. But since the person that perpetrated the crime is NOT the wife, but the new husband, the law did not apply. HB 444 broadens that definition to say anyone living in that household with the child endangers the welfare of the child, not just the husband, nor just the wife. The sponsor said that friendly amendments were made in the House. When the bill was drafted, it referred to rebuttable presumptions starting at the bottom of Page 1. The language was stricken, the ideas grouped together and placed into Line (f), Section 1. He preferred that the language be reinstated. He felt they were important. In the middle of Page 3, and toward Page 5, the Committee of the Whole modified a committee amendment to include deviate sexual conduct with an animal. That amendment met his approval. He said an amendment would be offered by **SENATOR BARTLETT. (EXHIBIT 4).** The amendment would deal with custodial interference, or a person that takes a child away contrary to the custody/visitation agreement.

Proponents' Testimony:

Sharon Bakerson, member of MACeM, (Majority Against Child Molestation), stated that the organization agreed with HB 444. Page 4, Line 22, referred to the speed with which these issues may be handled. It is still not in the best interest of the children, she said. There are children living in dangerous custodial homes where step-parents have been convicted of sexual abuse of children. Sometimes it has been a year or more, while the other parents is trying to legally remove the child. In this particular case, the people have moved to California and the father has no idea where the daughter is. This measure would strengthen the laws of the books and perhaps move the process along faster. Criminals are given the right to a speedy trial, she said, and children should also be given the right to a speedy hearing to protect them and place them into a safe homes. She urged support.

Clause Sitte, Deputy Director, Montana Legal Services, said they represented low-income people in Montana. HB 444 may reduce some of the backlogs in the court system. 25 per cent of their cases were family law cases. He asked the committee to imagine themselves as a parent/caregiver when the absent parent who had had little contact and provided no support, gained custody of the child after facing court sanctions for non-support. Add to the stress that the absent parent was located in another state. He said the people would be forced to get an attorney in the other state, even though the absent parent does not have a leg to stand on. He told the committee that they see this situation often, where the absent parent uses child custody as a way of battling back against support cases. HB 444 creates several rebuttable presumptions while it would eliminate, or at least, reduce these kinds of problems. Subsection 3 contains two presumptions: 1) that the primary caretaker ought to stay as the primary caretaker, and 2) if the child custody case if brought after a child support case, it is presumed to be vexatious. Subsection 4 as presented in the House added two more further elements: failure to pay birth costs, and the failure to pay child support are presumed to be not in the child's best interest. The presumptions are intended to be rebuttable presumptions which means that if contrary evidence is presented, the court does not have to assume the presumption. They could ignore it. The presumptions as presented in Sections 3 and 4 meets the criteria and are the obvious. Child custody experts say that children do best in situations where they have stability and custodial continuity.
On behalf of the many parents who provide consistent, regular, day-to-day care for their children with little or no help from the other parent, he asked support for HB 444.

Mary Alice Clark, represented the Advocates for Montana's Children, in saying they strongly support HB 444 as presented by the sponsor.

Rob and Renae Mahr, Dillon, submitted a letter in favor of HB 444. **(EXHIBIT 5)**

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR MIKE HALLIGAN asked the basis for taking the language out on Page 1 in the House committee. The sponsor said **REPRESENTATIVE BRAD MOLNAR** was reactive and further amended Page 3, which had originally referenced deviate conduct, period. The other amendments were made because the members felt the bill was tipping the burden away from the father, or tying the father's hands. He did not understand it. There was concern about the father providing the support through the primary family care, and that child support not counting. **SENATOR HALLIGAN** asked **Mr. Sitte** how the existing joint custody presumption played with the

level of presumptions seen in this bill? **Mr. Sitte** said they were rebuttable presumptions that played together very well. The court would assume joint custody is in the best interest of the child, unless best interest is not in the interest of the child. Then it looks to see if the best interest test is met. If one of the rebuttable presumptions is the person has failed to pay child support or birth costs, that presumption is rebutted, and the court need not consider joint custody. But, it does put an equal burden on both parents to support that child. **SENATOR DOHERTY** asked if the sponsor would like the rebuttable presumptions back into the bill. The sponsor replied that he would, if it would suit the committee's wishes. **CHAIRMAN CRIPPEN** said they probably struck Subsection 4 since (F) on Page 1 deals with Subsection 4. He did not understand why they struck Subsection 3B. **REPRESENTATIVE HARPER** said they just made an overly broad amendment and thought they had accomplished their purposes. He did not think it covered it at all.

Closing by Sponsor:

REPRESENTATIVE HARPER said he had no Senate sponsor and asked, if the committee would look favorably on the bill, they would provide one. He said he was also sensitive to the effective date of October 1, 1995. He said the case was on-going.

{Tape: 1; Side: B; Approx. Counter: 12.8}

EXECUTIVE ACTION ON HB 444

Motion: **SENATOR BARTLETT MOVED THE AMENDMENTS AS SHOWN IN (EXHIBIT 4).**

Discussion: **CHAIRMAN CRIPPEN** asked if she would like to insert an immediate effective date. She said she had no objections. **CHAIRMAN CRIPPEN** said that the **CHAIR WOULD RULE THAT AMENDMENTS HB044401.AVL TO HB 444 SHALL ALSO INCLUDE A THIRD AMENDMENT TO PROVIDE FOR AN IMMEDIATE EFFECTIVE DATE. SENATOR BARTLETT** explained her amendments said the request came from **REPRESENTATIVE WYATT AND SENATOR FORRESTER** because of constituent concerns of non-custodial parents taking children under visitation privileges, then consistently and persistently refusing to return the children to the custodial parent at the time agreed upon for their return. Although the Section on Custodial Interference says that they commit the offense if they kept the children too long, but there is no penalty, whether it is the first or the hundredth offense. This amendment, she said, says they could do that one time, but if this is a persistent pattern and they continue to keep the children beyond the visitation provisions of the custodial arrangement, they would be charged with custodial interference. It was modeled on similar language in a section of the code regarding returning the child. She urged approval of the amendment. The bill's sponsor had agreed with the amendment. She said the amendment would amend

the title as well. **SENATOR HALLIGAN** said there were two years to challenge the title problem. **Valencia Lane** said the purpose of the title was to give notice to interested parties, the public and legislators. When amending the title and stretching the contents of the bill, particularly late in the game, she thought there could be a title problem. She said it could be challenged for defective title only for two years after the effective date. **SENATOR BARTLETT** said **REPRESENTATIVE WYATT,** in pursuing this topic, went to the Child Support Enforcement Division to see if any of their bills might incorporate this provision. Theirs did not and they felt HB 444 came as close as any. **CHAIRMAN CRIPPEN** asked if it would be appropriate to have a severability clause. **Ms. Lane** said they could certainly put that in, and if the court wants to save parts of the bill, they could use that severability clause. There would be no guarantee that they would not strike down the entire bill, but she felt it would help.

Vote: On **SENATOR BARTLETT'S MOTION TO AMEND HB 444 AND TO ADD AN IMMEDIATE EFFECTIVE DATE,** the **MOTION CARRIED** on an oral vote with **SENATOR HALLIGAN** voting no.

Motion/Vote: **SENATOR HALLIGAN MOVED TO AMEND HB 444 BY THE ADOPTION OF A SEVERABILITY CLAUSE.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

Discussion: **CHAIRMAN CRIPPEN** asked the committee's feeling on the stricken presumptions in the bill. He asked if by putting some of that information in another place in the bill, would it take it out of the role of a rebuttable presumption? If so, the House amendments would strengthen the portion of the bill.

Motion: **SENATOR DOHERTY MOVED TO RE-INSERT 3 (a) and (b).**

Discussion: **SENATOR HALLIGAN** thought there was a fine line. The consideration of a relevant factor was less of a look at the issue than a presumption obviously was and the amendment hadn't taken care of it. He felt that the House committee could put it with the considerations but it certainly had greater weight as it was drafted as a rebuttable presumption. Their amendment tempered that, he said. **SENATOR DOHERTY** said that in that fine line the committee had weakened the bill as far as failure to pay birth-related costs or child support.

Vote: The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

Motion: **SENATOR DOHERTY MADE A MOTION TO STRIKE THE NEW SUBSECTION A., AND INSERT 4 (A) AND 4 (B).**

Discussion: **SENATOR DOHERTY** explained that the court, considering all relevant factors, is advised to think about the following things. Making rebuttable presumptions would be their policy and determination that if birth-related costs and child support are not paid, that would not be in the best interest of the child. As a matter of policy, the legislature would be

saying their bottom line is the consideration of those factors, and a very good explanation would be required in non-payment cases. **CHAIRMAN CRIPPEN** explained the motion as follows: the amendment would strike Lines 21 and 22 of Page 1, Subsection (f), further, on Page 2, Lines 5-9, re-insert Subsection 4. **SENATOR BARTLETT** said, "rebuttable presumption," meant going into a case with a fact being presumed, but someone with a good argument about why they did not pay can overcome that presumption and have the determination made in their favor. **SENATOR BAER** said it depended on how strong they wanted to make it. It is the duty of the court to consider all relevant factors. It would be a lesser standard of proof than rebuttable presumption which was included in the stricken statement they were seeking to reinstate.

Vote: The **MOTION CARRIED** on an oral vote, with **SENATOR HOLDEN** voting no.

Motion: **SENATOR HALLIGAN MOVED THAT HB 444 BE RECOMMENDED CONCURRED IN AS AMENDED.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote. **SENATOR DOHERTY** offered to carry the bill onto the Senate floor.

EXECUTIVE ACTION ON HB 340

Motion: **SENATOR BARTLETT MOVED THAT HB 340 BE AMENDED BY AN IMMEDIATE EFFECTIVE DATE TO BE INCLUDED IN HB34001.AGP AS SHOWN IN (EXHIBIT 3).**

Discussion: **SENATOR HALLIGAN** expressed his concern about the title. He thought it was a good amendment, but should be in a separate bill. It could be challenged within the next two years. He would have to vote against it on those grounds, he said. **SENATOR BARTLETT** pointed out that **Greg Petesch** felt the title could be stretched to accommodate these amendments. **CHAIRMAN CRIPPEN** asked why it would be codified in Title 41. **Valencia Lane** said the Title encompassed the abuse and neglect sections. **Valencia Lane** said she believed there was a title problem. If it were the first hearing on the first committee, she would not have the reservations, but at that late date, it would be stretching the bill somewhat. She said to address that problem, they could put in a severability clause.

Motion: **IN A SUBSTITUTE MOTION, SENATOR HALLIGAN MOVED TO SEGREGATE THE IMMEDIATE EFFECTIVE DATE TO AMEND HB 340.** The **MOTION CARRIED** on an oral vote.

Discussion: Reverting back to the original motion of amendment items # 1 and # 2, **SENATOR ESTRADA** asked how important the amendment was to **SENATOR BARTLETT** and if it would jeopardize the bill. She replied that she had been asked to work on the issue over 18 months prior to the session. She didn't feel it warranted a separate bill so she had asked the legislative council to watch for a similar topic. She did not think it would

SENATE STANDING COMMITTEE REPORT

March 20, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 444 (third reading copy -- blue), respectfully report that HB 444 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, lines 4 and 5.
Following: "~~PRESUMPTIONS~~" on line 4
Strike: remainder of line 4 through "CONSIDER" on line 5
Insert: "REBUTTABLE PRESUMPTIONS"

2. Title, line 8.
Following: "CRIME;"
Strike: "AND"
Insert: "REVISING THE OFFENSE OF CUSTODIAL INTERFERENCE;"
Following: "40-4-217,"
Strike: "AND"
Following: "40-4-219,"
Insert: "AND 45-5-304,"
Following: "MCA"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 1, lines 21 and 22.
Strike: subsection (f) in its entirety
Renumber: subsequent subsections

4. Page 2, line 10.
Following: line 9
Insert: "(3) The following are rebuttable presumptions and apply unless contrary to the best interest of the child:

(a) Custody should be granted to the parent who has provided most of the primary care during the child's life.

(b) A custody action brought by a parent within 6 months after a child support action against that parent is vexatious.

(4) The following are rebuttable presumptions:

(a) A knowing failure to pay birth-related costs that the person is able to pay is not in the best interest of the child.

(b) Failure to pay child support that the person is able to pay is not in the best interest of a child in need of the child support."

Amd. Coord. _____
Sec. of Senate

Sen Doherty
Senator Carrying Bill

641503SC.SPV

5. Page 5, line 15.
Insert: "**Section 4.** Section 45-5-304, MCA, is amended to read:

"**45-5-304. Custodial interference.** (1) A person commits the offense of custodial interference if, knowing that ~~he~~ the person has no legal right to do so, the person:

(a) ~~he~~ takes, entices, or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution;

(b) prior to the entry of a court order determining custodial rights, ~~he~~ takes, entices, or withholds any child from the other parent ~~where~~ when the action manifests a purpose to substantially deprive that parent of parental rights; or

(c) ~~he~~ is one of two persons who has joint custody of a child under a court order and ~~he~~ takes, entices, or withholds the child from the other ~~where~~ when the action manifests a purpose to substantially deprive the other parent of parental rights.

(2) A person convicted of the offense of custodial interference shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(3) ~~A~~ With respect to the first alleged commission of the offense only, a person who has not left the state does not commit an offense under this section if ~~he~~ the person voluntarily returns ~~such~~ the child, incompetent person, or other person to lawful custody prior to arraignment. ~~A~~ With respect to the first alleged commission of the offense only, a person who has left the state does not commit an offense under this section if ~~he~~ the person voluntarily returns ~~such~~ the child, incompetent person, or other person to lawful custody prior to arrest."

NEW SECTION. **Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval."

-END-

1

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3-20-95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

SEN:1995
wp.rollcall.man

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 3-20-95
BILL NO. HB 444

Amendments to House Bill No. 444
Third Reading Copy (blue)

Requested by Senator Bartlett
For the Committee on Judiciary

Prepared by Valencia Lane
March 20, 1995

1. Title, line 8.
Following: "CRIME;"
Insert: "REVISING THE OFFENSE OF CUSTODIAL INTERFERENCE;"
Following: "40-4-217,"
Strike: "AND"
Following: "40-4-219,"
Insert: "AND 45-5-304,"

2. Page 5, line 15.
Insert: "**Section 4.** Section 45-5-304, MCA, is amended to read:

"**45-5-304. Custodial interference.** (1) A person commits the offense of custodial interference if, knowing that ~~he~~ the person has no legal right to do so the person:

(a) ~~he~~ takes, entices, or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution;

(b) prior to the entry of a court order determining custodial rights, ~~he~~ takes, entices, or withholds any child from the other parent where the action manifests a purpose to substantially deprive that parent of parental rights; or

(c) ~~he~~ is one of two persons who has joint custody of a child under a court order and he takes, entices, or withholds the child from the other where the action manifests a purpose to substantially deprive the other parent of parental rights.

(2) A person convicted of the offense of custodial interference shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(3) ~~A~~ With respect to the first alleged commission of the offense only, a person who has not left the state does not commit an offense under this section if ~~he~~ the person voluntarily returns such person to lawful custody prior to arraignment. ~~A~~ With respect to the first alleged commission of the offense only, a person who has left the state does not commit an offense under this section if ~~he~~ the person voluntarily returns such person to lawful custody prior to arrest.""

{*Internal References to 45-5-304: None.*}

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 3-20-95
BILL NO. HB 444

MEMO TO: Senate Juditiary Committee

FROM: Rob and Renae Mahr

DATE: March 8, 1995

SUBJECT: House Bill 444, further protecting the children in custody

As you can see by House Bill 444, a very important aspect is left out of the modification and visitation statutes. If the person convicted of any of the crimes listed in the subsections is any other than the parent, the kids are left with no protection.

These laws should include any other person (not only adults, but ANY criminal defined in the subsections of any age) in contact with the child or children. Step-parents, relatives, live-in boy- or girl-friends, and caregivers convicted of these crimes need to be held as responsible as the parents. The simple changing of these two statutes to include all parties involved in the day to day lives of children will immediately protect children without a total revamping of the system.

We are personally involved in this because Rob's ex-wife married a sex offender just days after she was awarded custody of their four year old daughter. The information of the new step-father's sexual deviance and other theraputic needs was kept from us. We were unaware of his problems until almost a year after their marriage. Now, it will be another year before this gets in front of a judge. Some allowance must be made to protect the children who are so vulnerable and precious. This bill will require the judges to hear the cases in which time is such an important element.

We would be happy to talk to anyone who has questions about this bill. It will probably be too late for us as the judge has already allowed Rob's ex-wife and her sex-offender husband a year of free reign before our hearing date. If these laws are changed, we hope it will include any case in front of a judge at the time it is passed.

Sincerely,

Rob and Renae Mahr

Rob and Renae Mahr
202 Legget
Dillon, MT 59725
(406)683-4733
OR
3716 Wylie Drive
Helena, MT 59601
(406)227-8059

DATE 3-20-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HJR 27, HB 444, HB 491, HB 340

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
W James Kembel	City of Billings	HB491		X
Michael Kandas	Self	HB340	✓	
Sandee Kandas	Self	HB340	✓	
Jerry Williams	Montana Police Protective Assn.	HB491		X
Sharon L. Bakersen	Macem	HB340	X	
Sharon L. Bakersen	MACeM	HB344	X	
MARY ALICE COOK	ADV. FOR MTS CHILDREN	HB 340 HB 444	✓	
Klaus Sitte	Mont. Legal Servs Assn	HB 444	✓	
Jim Oberlander	Mt Chiefs of Police	HB491		X
Lorna Frank	MT Farm Bureau	HJ 27	✓	
Troy McGee	Mont Police Assoc	491		X
William J Ware	ME Asso of Chiefs of Police MACOP - Chiefs	491		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

HOUSE BILL NO. 444

INTRODUCED BY HARPER, WYATT, HURDLE, KOTTEL, SOFT, GRIMES, HOLLAND

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ~~REBUTTABLE PRESUMPTIONS AN ADDITIONAL FACTOR THAT A COURT MUST CONSIDER~~ REBUTTABLE PRESUMPTIONS IN CHILD CUSTODY PROCEEDINGS; ALLOWING A PARENT TO OBJECT AND HAVE A HEARING IN VISITATION PROCEEDINGS AND CUSTODY MODIFICATION PROCEEDINGS IF A PERSON RESIDING IN THE OTHER PARENT'S HOUSEHOLD HAS BEEN CONVICTED OF A CERTAIN LISTED CRIME; ~~AND~~ REVISING THE OFFENSE OF CUSTODIAL INTERFERENCE; AMENDING SECTIONS 40-4-212, 40-4-217, ~~AND~~ 40-4-219, AND 45-5-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-4-212, MCA, is amended to read:

"**40-4-212. Best interest of child.** (1) The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors, including but not limited to:

(a) the wishes of the child's parent or parents as to ~~his~~ custody;

(b) the wishes of the child as to ~~his~~ a custodian;

(c) the interaction and interrelationship of the child with ~~his~~ the child's parent or parents~~, his~~ and siblings~~,~~ and with any other person who may significantly affect the child's best interest;

(d) the child's adjustment to ~~his~~ home, school, and community;

(e) the mental and physical health of all individuals involved;

~~(F) A KNOWING FAILURE OF A PARENT TO PAY BIRTH-RELATED COSTS OR CHILD SUPPORT THAT THE PARENT IS ABLE TO PAY;~~

~~(f)~~(G)(F) physical abuse or threat of physical abuse by one parent against the other parent or the child; and

~~(g)~~(H)(G) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent.

(2) A de facto custody arrangement, in the absence of a prior custody decree, does not require the child's parent or parents to prove the factors set forth in 40-4-219.

REFERENCE BILL AS AMENDED 40

~~(3) The following are rebuttable presumptions and apply unless contrary to the best interest of the child:~~

~~(a) Custody should be granted to the parent who has provided most of the primary care during the child's life.~~

~~(b) A custody action brought by a parent within 6 months after a child support action against that parent is vexatious.~~

~~(4) The following are rebuttable presumptions:~~

~~(a) A knowing failure to pay birth-related costs that the person is able to pay is not in the best interest of the child.~~

~~(b) Failure to pay child support that the person is able to pay is not in the best interest of a child in need of the child support.~~

(3) THE FOLLOWING ARE REBUTTABLE PRESUMPTIONS AND APPLY UNLESS CONTRARY TO THE BEST INTEREST OF THE CHILD:

(A) CUSTODY SHOULD BE GRANTED TO THE PARENT WHO HAS PROVIDED MOST OF THE PRIMARY CARE DURING THE CHILD'S LIFE.

(B) A CUSTODY ACTION BROUGHT BY A PARENT WITHIN 6 MONTHS AFTER A CHILD SUPPORT ACTION AGAINST THAT PARENT IS VEXATIOUS.

(4) THE FOLLOWING ARE REBUTTABLE PRESUMPTIONS:

(A) A KNOWING FAILURE TO PAY BIRTH-RELATED COSTS THAT THE PERSON IS ABLE TO PAY IS NOT IN THE BEST INTEREST OF THE CHILD.

(B) FAILURE TO PAY CHILD SUPPORT THAT THE PERSON IS ABLE TO PAY IS NOT IN THE BEST INTEREST OF A CHILD IN NEED OF THE CHILD SUPPORT."

Section 2. Section 40-4-217, MCA, is amended to read:

"**40-4-217. Visitation.** (1) A parent who is not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition of a grandparent, grant reasonable visitation rights to the grandparent of the child if the court finds, after a hearing, that the visitation would be in the best interest of the child.

(3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the court may not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health or unless the provisions of subsection (6) apply.

(4) ~~So~~ As long as a noncustodial parent who has visitation rights under a decree or a custody agreement remains a resident of this state, a resident custodial parent shall, before changing the child's residence to another state and unless the noncustodial parent has given written consent, give written notice to the noncustodial parent, as provided in subsection (5).

(5) The written notice required by subsection (4) must be served personally or given by certified mail not less than 30 days before the proposed change in residence. Proof of service must be filed with the court that issued the custody order. The purpose of the notice is to allow the noncustodial parent to seek a modification of ~~his~~ the visitation schedule.

(6) (a) If a noncustodial parent or other person residing in the noncustodial parent's household has been convicted of any of the crimes listed in subsection (6)(c), the custodial parent or any other person who has been granted custody of the child pursuant to court order may file an objection to visitation with the court. The custodial parent or other person having custody shall give notice to the noncustodial parent of the objection as provided by the Montana Rules of Civil Procedure, and the noncustodial parent shall have 20 days from the notice to respond. If the noncustodial parent fails to respond within 20 days, the visitation rights of the noncustodial parent are suspended until further order of the court. If the noncustodial parent responds and objects, a hearing must be held within 30 days of the response.

(b) The noncustodial parent has the burden at the hearing to prove that visitation by the noncustodial parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of visitation is not in the best interest of the child.

(c) This subsection (6) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(V) DEVIATE SEXUAL CONDUCT WITH AN ANIMAL, AS DESCRIBED IN 45-2-101 AND PROHIBITED UNDER 45-5-505;

~~(v)~~(VI) incest, as described in 45-5-507;

~~(vi)~~(VII) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

~~(vii)~~(VIII) endangering the welfare of children, as described in 45-5-622;

~~(viii)~~(IX) domestic abuse of the type described in 45-5-206(1)(a);

~~(ix)~~(X) sexual abuse of children, as described in 45-5-625."

Section 3. Section 40-4-219, MCA, is amended to read:

"**40-4-219. Modification.** (1) The court may in its discretion modify a prior custody decree if it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or ~~his~~ the child's custodian and that the modification is necessary to serve the best interest of the child and if it further finds that:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian;

(c) the child's present environment endangers seriously ~~his~~ the child's physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to ~~him~~ the child;

(d) the child is 14 years of age or older and desires the modification;

(e) the custodian willfully and consistently:

(i) refuses to allow the child to have any contact with the noncustodial parent; or

(ii) attempts to frustrate or deny the noncustodial parent's exercise of visitation rights; or

(f) the custodial parent has changed or intends to change the child's residence to another state.

(2) A court may modify a de facto custody arrangement in accordance with the factors set forth in 40-4-212.

(3) The court shall presume the custodian is not acting in the child's best interest if the custodian does any of the acts specified in subsection (1)(e) or (8).

(4) The court may modify the prior decree based on subsection (1)(f) to provide a new visitation schedule and to apportion transportation costs between the parents.

(5) Attorney fees and costs ~~shall~~ must be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

(6) A custody decree may be modified upon the death of the custodial parent pursuant to 40-4-221.

(7) As used in this section, "prior custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding.

(8) (a) If a parent or other person residing in that parent's household has been convicted of any of the crimes listed in subsection (8)(c), the other parent or any other person who has been granted custody of the child pursuant to court order may file an objection to the current custody order with the court. The parent or other person having custody shall give notice to the ~~convicted~~ other parent of the objection as provided by the Montana Rules of Civil Procedure, and the ~~convicted~~ other parent shall have 20 days from the notice to respond. If the ~~convicted~~ other parent fails to respond within 20 days, the custody rights of the ~~convicted~~ other parent are suspended until further order of the court. If the ~~convicted~~ other parent responds and objects, a hearing must be held within 30 days of the response.

(b) The ~~convicted~~ other parent has the burden at the hearing to prove that custody by the ~~convicted~~ other parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of custody is not in the best interest of the child.

(c) This subsection (8) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(V) DEVIATE SEXUAL CONDUCT WITH AN ANIMAL, AS DESCRIBED IN 45-2-101 AND PROHIBITED UNDER 45-5-505;

~~(v)~~(VI) incest, as described in 45-5-507;

~~(vi)~~(VII) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

~~(vii)~~(VIII) endangering the welfare of children, as described in 45-5-622;

~~(viii)~~(IX) domestic abuse of the type described in 45-5-206(1)(a);

~~(ix)~~(X) sexual abuse of children, as described in 45-5-625."

SECTION 4. SECTION 45-5-304, MCA, IS AMENDED TO READ:

"**45-5-304. Custodial interference.** (1) A person commits the offense of custodial interference if,

knowing that ~~he~~ the person has no legal right to do so, the person:

(a) ~~he~~ takes, entices, or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution;

(b) prior to the entry of a court order determining custodial rights, ~~he~~ takes, entices, or withholds any child from the other parent ~~where~~ when the action manifests a purpose to substantially deprive that parent of parental rights; or

(c) ~~he~~ is one of two persons who has joint custody of a child under a court order and ~~he~~ takes, entices, or withholds the child from the other ~~where~~ when the action manifests a purpose to substantially deprive the other parent of parental rights.

(2) A person convicted of the offense of custodial interference shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(3) ~~A~~ With respect to the first alleged commission of the offense only, a person who has not left the state does not commit an offense under this section if ~~he~~ the person voluntarily returns ~~such~~ the child, incompetent person, or other person to lawful custody prior to arraignment. ~~A~~ With respect to the first alleged commission of the offense only, a person who has left the state does not commit an offense under this section if ~~he~~ the person voluntarily returns ~~such~~ the child, incompetent person, or other person to lawful custody prior to arrest."

NEW SECTION. **SECTION 5. SEVERABILITY.** IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

NEW SECTION. **SECTION 6. EFFECTIVE DATE.** [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

-END-